IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL FIRST APPEAL No. 751 of 2004

YUDISHTHIR
V/S
DAULATRAM

Mr. AK DAVE, for the appellant / petitioner

Date of Order : 5.4.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

By the impugned Judgment & decree, learned trial court dismissed the appellant's suit for damages for malicious prosecution. The suit was filed alleging, that the plaintiff's mine no.240, was adjacent to the defendant's mine no.214, and defendant wanted to excavate the portion of the plaintiff's mine, and on that count, he started nursing a grudge. With this, it is alleged, that with intention to harass and humiliate the plaintiff, the defendant lodged a false report with the S.P., Jodhpur, alleging inter alia, that on 27.6.96, plaintiff's father, along with person named in the report, came at the mine, hurled abuses and gave physical beating. Thereupon, criminal case no. 138/96 was registered, but challan was filed only against the plaintiff, for the offence under Sections. 451, 341, 323 and 504 IPC, wherein plaintiff had to get bail, charges were framed, and after hearing the parties, the learned trial court found the case to be false. Thus it is alleged, that defendant lodged the false report maliciously, and without any reasonable and probable cause.

The defendant contested the suit, denying the allegation about his intention to grab anyportion of plaintiff's mine, or nursing any grudge, rather it was pleaded, that Police after investigation, found the report to be correct, and charge-sheet was submitted, and simply

because, the criminal court, acquitted the accused, it cannot furnish any cause of action to the plaintiff to maintain the present suit.

The learned trial court has found, that the plaintiff has failed to prove, that the prosecution was launched without any reasonable and probable cause. It was also found, that simply because the plaintiff has been acquitted, it cannot be said that prosecution was launched maliciously. Inter alia with this finding, suit has been dismissed.

I have gone through the Judgment. At my request, learned counsel for the appellant read to me the statement of PW-2, the father of plaintiff. A reading whereof makes it clear, that even according to him, the dispute existed between the parties with respect to boundary of the mine. With this, it has also been deposed by PW-2, that on the date of incident, being 27.6.96, the incident took place. According to the witness, the plaintiff is said to have informed the witness (Father) about the defendant having given beating to plaintiff, and for that, the witness deposed to have lodged the FIR. It is not known as to what happened to that report, but then, from this part of evidence of PW-2, this much is clear, that on 27.6.96, some accident took place. May be, that both the parties may have their own version of the incident, as to whether plaintiff received beating or the plaintiff gave beating, but then, this much stands to be the admitted position, that some incident did take place, for which according to PW-2, he lodged the report, while in the present case, may be belatedly, defendant lodged the report on 29.6.96.

If this is the situation, then it cannot be said, that if the report was lodged by defendant on 29.6.96, for the accident of 27.6.96, for which the plaintiff's father himself is said to have lodged the report, and by giving version about the happening of the accident to be the one as was said by defendant, it cannot be said, that FIR was lodged without any reasonable and probable cause.

The next submission made was, that the learned trial court has not said anything about two documents Ex.8 & 9, being statement of defendant, which are materially at variance. Suffice it to observe, nothing much turns on these statements, which were recorded by the investigating agency, when the incident did take place, for which each party has its own version, and the criminal court has not believed the version of the present defendant. At best the two statements may have the effect of persuading the court not to believe that the incident occurred in the manner as alleged by the defendant, but from them it cannot be concluded, rather they are not even indicative of the fact that the report was lodged by the defendant, without any reasonable and probable cause.

Thus, I do not find any force in this appeal, and same is therefore, dismissed summarily.

(N P GUPTA),J.

/Srawat/